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Stephen W. Townsend, Clerk
Supreme Court of New Jersey
R.J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625

Re: Abbott et al. v. Burke, et al.
Docket No. 42,170

Dear Mr. Townsend:

Please accept this letter in lieu of a more formal submission in response to the filings by the Boards of Education of Asbury Park, Elizabeth, Passaic, Pemberton and Trenton (collectively "Boards") and the New Jersey Education Association ("NJEA"). Both NJEA and the Boards ("movants") have motions pending to participate in this matter. The Commissioner does not oppose the participation of the movants as amicus curiae. Accordingly, to permit the Court's expedited review of the Commissioner's motion, the Commissioner is responding to movants' substantive filings while those motions to participate are still pending.

The movants suggest that the Commissioner is seeking "dramatic" relief and argue that the relief, if granted, could undo the progress being made in Abbott districts. This argument is based on the erroneous premise that the Commissioner is seeking to "eliminate" whole school reform. Boards Brief at 14; NJEA Brief at 13. The Commissioner's proposal, however, does not eliminate whole school reform. To the extent it is working in and supported by schools and districts, nothing in the Commissioner's proposal would require its elimination. The models will presumably continue and will be funded. It is in those instances where the model is not working, for whatever reason, that a change is anticipated based on the Commissioner's proposal. Even then, districts and schools are not precluded from presenting reasons why the model should be

continued if that is the ultimate decision after the completion of the needs assessment. Districts will, however, be required to demonstrate that the approach they select will assist in achieving the goals of Abbott.

The need for a school-by-school assessment is highlighted by the Certification of James K. Lytle ("Lytle Certification"). Superintendent Lytle claims that much progress is being made in Trenton and holds out the Washington School as an example of that progress. Lytle Certification, ¶13. The Washington School does appear to be doing well on measures of student achievement and may be an example of a school that decides to continue on course.

Monument School in Trenton, however, shows a very different picture. In 1999, the Monument School general education passage rate on the Language Arts Literacy portion of the ESPA was 38.3%. In 2002, the passage rate dropped to 22.5%. At the same time, the State average increased substantially. Certification of Peter Noehrenberg, Exhibit B. The same story is reflected in the passage rate on the Math portion of the ESPA, going from 17% in 1999 to 9.8% in 2002. This provides just one example of why the school-by-school approach being proposed by the Commissioner is not only reasonable but required. Looking solely at average increases at the district level can mask low performing schools. See Certification of Bari Anhalt Erlichson, ¶¶17-22; Certification of Robert Slavin, ¶¶6-8.

Given that Trenton has instituted a "state-of-the-art internal assessment, evaluation and accountability system," Lytle Certification, ¶30, that district should have no problem in demonstrating what is needed under the Commissioner's proposal to retain or change programs and strategies. The Commissioner's proposal will ensure that all schools in the Trenton district and other Abbott districts are getting a program to fit their needs.

Relying on Borman, Hewes, Overman and Brown, Comprehensive School Reform and Student Achievement, A Meta Analysis, (2002) (hereinafter "Borman Study"), the Boards claim that the Commissioner has not given the models enough time to work. Borman's meta-analysis does, as the Boards note, show a correlation between the number of years a model is implemented and progress made. Borman, however, could not conclude that this correlation was actually the result of a cumulative impact of the model. An alternative explanation was just as viable -- i.e., "that schools experiencing particular success continue implementing the reforms while the schools not experiencing as much success drop them after the first few years." Id. at 38.

Whether or not the models have a cumulative impact on student achievement is brought into further question based on the experience in New Jersey. Fourteen Abbott schools were implementing Success For All ("SFA") for a number of years before Abbott V was decided. In the Remand proceeding, Dr. Slavin testified that the following schools were implementing SFA at that time and that most had established their SFA program around 1992-93: Bangs Avenue, Bradley Primary and Thurgood Marshall in Asbury Park; Cramer in Camden; Columbus (#15), Robert Morris (#18), Peterstown (#3) and Theodore Roosevelt (#17) in Elizabeth; Berkeley Terrace in Irvington; PS 17; PS 29; Roberto Clemente; School 12 and School 2 in Paterson. Transcript (11/17/97); T88-3 through T88-18. Given the length of time SFA has been in those schools, the expectation would be that there would be gains in student achievement consistent with those promised by SFA and in particular that the passage rate on the Language Arts Literacy portion of 2002 ESPA would be quite high. However, only two of those schools (Roberto Clemente and Columbus (#15)) had passage rates that met or exceeded the State average. New Jersey 2003 School Report Card. Those two schools appear to be doing well with the model and are likely to retain SFA under the Commissioner's proposal. Other schools may be improving, although not yet at the State average; these schools may also decide to keep SFA. In two Asbury Park schools (Bangs Avenue and Bradley) and one Camden school (Cramer), more than half the students are failing this assessment. Ibid. These schools very well might want to take a different approach, be it another model or an alternative means of improving student achievement.

In many ways, the Borman Study supports the approach taken by the Commissioner.* Borman notes that the studies show wide

* Interestingly, the Borman Study finds that "requir[ing] the active involvement of parents and the local community in school governance and improvement activities" was "statistically significant" in that models having those requirements "tend to achieve worse outcomes than models that do not require these activities." Id. at 36. The Commissioner, however, does not intend to eliminate the active role of parents and the community; in fact, they will have a significant role as part of the school-based management and improvement team ("SMIT"). The SMIT and the principal do the needs assessment and the school's three-year plan. Proposed N.J.A.C. 6A:10-5.2 et seq. Additionally, a representative of the SMIT participates in the ultimate decision on whole school reform. Proposed N.J.A.C. 6A:10-5.4. The substantial involvement of the SMIT should also alleviate the concerns raised by NJEA that teachers would not be sufficiently involved. See NJEA Brief at 13.

variability and that they are just averages. He further notes that, on a school-by-school basis, the results are likely to be even more variable. Reply Brief at 11-12. It is this variability that the Commissioner's proposal is designed to capture and remedy. As Borman states

we must take an experimental approach to educational reform, an approach in which we continue to evaluate new programs designed to cure specific problems, in which we learn whether or not these programs make a difference, and in which we retain, imitate, modify or discard them on the basis of apparent effectiveness on the multiple imperfect criteria available.

[Id. at 38].

The Boards further argue that without a comparable study to A Study of Supplemental Programs and Recommendations for the Abbott Districts (November 1997) ("Study") the programs, positions and services identified in that Study cannot be modified. A review of that Study, however, shows that in those instances where research was cited, it was generally limited to identifying the need not the means by which it should be addressed such as having particular job titles. See, e.g., technology coordinator, drop-out prevention specialist or counselor, security guards. After five years of experience with the programs, positions and services recommended in the Study, the Commissioner concluded that it is time to look school-by-school at the efficacy of those recommendations and make decisions whether they are working and should be retained or whether a different approach is warranted.

Relying on the Certification of Thomas Highton, the Boards argue that the Abbott V mandates were important in improving student outcomes in Union City and thus that district provides no basis for "a major overhaul of the Abbott V remedies." Boards Brief at 15. Highton claims that "Abbott V has permitted Union City to hire the staff necessary to implement these critically needed programs in our schools." Highton Certification, ¶11. As the Certification of Fred Carrigg makes clear, however, significant gains in student outcomes were evident well before Abbott V. Carrigg Certification, ¶¶10-11, Exhibits A and B. Moreover, it is

See also Proposed N.J.A.C. 6A:10-5.2(d)(1) (a vote of the teachers will be required as to whether to retain, abandon or modify the model).

difficult to understand how the Abbott V remedies "permitted Union City to hire the staff" when Union City has not received any additional funds as a result of Abbott V. Union City has neither sought nor received Additional Abbott v. Burke State aid, the only aid for the K-12 program that was a result of Abbott V. See MacInnes Certification, Exhibit I. Union City, therefore, could have hired this staff with or without the mandates in Abbott V and its implementing regulations.

Special Assistant Carrigg notes that the approach in Union City was to continue on its successful path of student achievement without being impeded or intruded upon by the Abbott V mandates. Carrigg Certification, ¶14. This is consistent with findings of Dr. Erlichson based on her studies. Education Policy Forum Luncheon, Two State Policy Perspectives on Comprehensive School- and District-wide Reform: The Unfolding Stories of New Jersey and Maine State Reforms (May 10, 2002) ("But, a good portion of the schools, particularly in our third cohort of implementation, saw it as, which model can we call on that will ask us to do nothing; we want to hang a shingle outside that says, we are implementing a model, go away."); Debra Viadero, Education Week (November 7, 2001), "Whole-School Projects Show Mixed Results," quoting Dr. Erlichson, ("When people say resistance, you often think of the lazy teacher who doesn't want to change, but in some of these cases, these were protective faculties who were excited about what was already going on in their schools and had the data to back it up."). Finally, other researchers have found similar success stories using the district-led approach that was used in Union City. See Togneri and Learning First Alliance, Beyond Islands of Excellence: What Districts Can Do to Improve Instruction and Achievement in All Schools (2003); Snipes, Doolittle and Herlihy, Foundations for Success: Case Studies of How Urban School Systems Improve Student Achievement (2002).

The majority of the Superintendents filing Certifications in opposition to the Commissioner's motion do not voice specific opposition to the Commissioner's request for more flexibility in the area of whole school reform. See Superintendent Certifications; Certifications of Dr. Robert Holster, Mark Cowell, Dr. Antonio N. Lewis, Thomas G. Dunn, Jr. Those certifications actually focus almost solely on funding for FY04. Their arguments, however, are based on the faulty assumptions already discussed in the Commissioner's reply brief. See Reply Brief at 23-25. As discussed therein, districts will continue to be funded at parity and beyond if a need is demonstrated. Accordingly, in FY04 Abbott districts will continue to spend at or above the I&J average and well-above the rest of the districts. At this funding level, the

dire fiscal consequences predicted by these districts are hard to accept. Moreover, the issue should not be about funding but rather the provision of effective and efficient programs and services. The effective and efficient programs and services funded in FY03 will continue to be funded for FY04.

In the end, the focus of the Abbott V remand was to identify "what works" in poor urban schools and districts and to require implementation of those identified programs. Presently, the research base is strong that preschool and intensive early literacy programs are effective means of improving the academic performance of economically disadvantaged students. These programs are at the core of the Commissioner's proposal and the ELC and movants do not dispute that the emphasis should be there. The dispute is really whether a particular school should be required to implement other recommendations in the Study, even if an evaluation demonstrates that a particular program, position or service recommended in the Study is not effective in that school. To continue to expend scarce resources on programs, positions or services that are not working is neither reasonable nor consistent with the goals of Abbott V -- i.e. the effective and efficient implementation of programs that work. By his motion, the Commissioner is not seeking to abandon Abbott V but rather to see that its goals are fully realized. Accordingly, the Commissioner's request should be granted.

Sincerely yours,

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